

COMMISSIONERS APPROVAL

CHILCOTT *gc*

LUND *BL*

THOMPSON *AT*

TAYLOR (Clerk & Recorder)

Date.....November 9, 2006

Members Present.....Commissioner Greg Chilcott,
Commissioner Betty Lund and Commissioner Alan Thompson

Minutes: Sally Fortino

The Board met with Special Projects Coordinator Marty Birkeneder for the purpose of reviewing and possibly approving the STEP Contract (Seat Belt and DUI Tracking) for the Sheriff's office. Marty stated the grant submittal through Department of Transportation is similar to last year's funding.

Lt. Joe Birkeneder explained they have no problems obtaining officers for overtime enforcement.

Commissioner Thompson made a motion to have the chairman sign the grant proposal with the Department of Transportation. Commissioner Lund seconded the motion for discussion and asked about the fuel allotment. Lt. Birkeneder stated \$.02 per mile is what is offered; some deputies choose to remain stationary, while others choose to patrol. Minimal gas is used while sitting, and the Deputy is still able to respond to emergency calls. The Sheriff's Department picks up the difference in gas prices. All voted "aye".

In other business, the Board of County Commissioners met to review/adopt a Hold Harmless Agreement for residents along the North Kootenai Creek Road due to the recent flooding. Commissioner Chilcott was absent from this meeting. Commissioner Thompson made a motion to approve the Hold Harmless Agreement as presented this day from the County Attorney's office. Commissioner Lund seconded the motion, and all voted "aye".

The Board met for a public hearing in regard to an amendment(s) to the Ravalli County Subdivision Regulations. Minutes of that meeting are as follows:

4. Correspondence

Karen called attention to the memorandum dated November 9, 2006, which she provided to the members of each Board. She noted that the most recent comments were recommendations to the requirements regarding floodplains. (See Attachment B, Memorandum titled Recommended Amendments to the Ravalli County Subdivision Regulations)

5. Public Hearing: Amendments to the Ravalli County Subdivision Regulations

(i) Staff Report

Karen noted that the subject of this hearing is a proposed set of amendments to the Ravalli County Subdivision Regulations. The primary goal is to make the regulations compliant with new State statutes. These changes resulted in substantive changes to Chapters 3 and 4.

She noted that the draft was developed by Planning Staff in consultation with the County Attorney's Office and is based on the current Ravalli County Subdivision Regulations, current policies and procedures, and the Model Regulations for the State. It was also reviewed by legal counsel provided through the Montana Association of Counties (MACO) and the County Attorney's Office.

She said she has received some general concerns regarding the extent of the changes and the difficulty of comparing the existing regulations to the proposed amendments. She noted that although an underline/strikeout version is the preferred approach for regulation revisions, Staff did not complete one because the changes required by state law varied substantially in organization and content from the current regulations. She noted it would take more time than was available to prepare underline/strikeout drafts for Chapters 3 and 4 than Chapters 1, 2, and 5.

She provided an overview of changes to each chapter. For Chapter 1, Staff is proposing to replace the existing chapter with this new version. She noted Staff is proposing to replace the existing Chapter 2 with this new version. She noted that most changes came from the Model Subdivision Regulations and that there are a few instances where Staff reworked definitions to try and make them more usable. Definitions that were inaccurate or unnecessary were removed, and definitions were added for terms commonly used, but not currently defined.

She noted that Staff is proposing to replace the existing Chapter 3 with this new version and that the most substantive changes to the Ravalli

County Subdivision Regulations are proposed in this chapter based on Senate Bills 116 and 290 from the 2005 legislative session.

She noted that Staff is recommending significant changes to the public review process and state law allows for several different options. Given the requirements in state law and our recent experience with following the new statutory requirements for public process in the review of Aspen Springs, she noted that Staff tried to streamline the process as much as possible and allow for direct access of interested parties to the governing body. For major and subsequent minor subdivisions Staff recommended that the County seek advice from the Planning Board, but the public hearing will be held before the Commissioners. In limited circumstances if a subsequent public hearing is required, it too will be held before the BCC. For first minor subdivisions, a public meeting is required before the Board of County Commissioners. For all subdivisions, the County is required to seek advice from the Planning Board. If this approach is adopted, the Planning Board will need to set up its own procedures for determining under what circumstances and how they will provide advice. She explained the rationale for this recommendation

She noted that Staff is proposing to replace the existing Chapter 4 with this new version. She noted that primary changes required to this chapter by Senate Bill 116 included development of evasion criteria and provision of an appeals procedure. She noted that Staff is recommending revisions to only a few sections of Chapter 5 to address some statutory requirements including irrigation easements, irrigation agreements, and new water and sanitation rules. She noted that Chapter 5 needs to be overhauled, but there was not time now.

For Chapter 6, she noted that no changes are currently proposed and this chapter will be reviewed as part of the next set of revisions to comply with some new legislation that was not addressed in this round of revisions. She explained that Staff is recommending repeal of Chapter 7 and instead to have fees adopted in a separate document as part of the Administrative Materials. She noted that no changes are currently proposed to Chapter 8 and that this chapter will be reviewed as part of the next set of revisions. She recommended the repeal of Chapter 9 in its entirety because there are legal questions about the validity of this provision. She recommended repealing Chapter 10 and the appendices.

She noted that the November 9, 2006, memorandum includes recommended changes based on comments from legal counsel from both MACO and the County Attorney's Office. She noted that she received a lot of great comments, but because of the expedited process, she could not provide a response to all of them. She said that she can do a line-by-line review or come back with a set of additional

revisions. (See Attachment C, Public Review Draft of the Ravalli County Subdivision Regulations dated October 25, 2006)

James noted that George Corn, Myra Schultz, and he were all involved with the draft and said that excepting the parkland requirement, it is his opinion that the amendments would bring the County into compliance with changes made to the MSPA. He noted that changing to a single hearing would reduce legal pitfalls that have caused this County litigation and other problems in the past. He asked the Boards not to make substantive changes to Chapter 5 without proper legal notice.

George Corn said that with the proposed changes to the regulations, the Planning Board's role would return to the original intentions of the legislature. He noted that Planning Staff and Staff from the County Attorney's Office have to go through two public meetings at this point. He said that elected officials should make those decisions and recommended adoption of a single public hearing as part of the revisions. He noted he had not had a chance to respond to comments received in the past few days. He recommended keeping the revision process moving and working on Chapter 5 of the regulations in the future.

(ii) Public Comment

Kathleen Driscoll said she liked the idea of one public hearing before the Commissioners because that Board has to interact with citizens and people usually have more energy upfront to fight subdivisions. She said she likes the thought of the Planning Board doing planning. She asked about the environmental assessment on Page 3-11 of the proposed regulations. She also expressed a desire to make the Growth Policy regulatory.

Steve Powell encouraged both Boards to adopt the changes to get the Planning Department open for business. He noted that many subdivisions are relatively straight-forward, one or two-lot projects. He said the County needs to prioritize County Commissioner time and Staff to separate which applications will have public impact and which will not. He stated he is in favor of having the Planning Board review specific proposals to determine if they are in the "public interest" rather than having them review every subdivision. He noted that smaller projects cannot afford to go through the process and said that some proposals take two to three years. He recommended moving ahead and scheduling a subsequent hearing.

Terry Nelson stated that he likes the streamlined process in the proposed regulations and thinks it benefits everyone but the County Commissioners. He noted that he submitted concerns to Karen but did

not have time to discuss them with her yet. He stated that the definition of "stream" in the proposed regulations is dangerous because consultants would have to find underground streams. He noted that he previously had concerns about the floodplain analysis, but the changes were even more detrimental in the latest memo from Karen.

Karen noted that the comments in the memo were from the Ravalli County Floodplain Administrator and the DNRC.

Terry Nelson stated that the current regulations require a floodplain analysis or waiver when any portion of the subdivision is within 1,000 horizontal feet of a stream draining an area of 15 square miles. He noted that 1,000 feet from a creek is a long way and recommended 300 to 400 feet. He also recommended a vertical limit, such as 15 feet above a stream. He noted that waivers cost \$200, time, and effort, although in some cases, streams are 1,000 feet away from and 140 feet vertically above streams. He noted with DNRC's new recommendation, consultants would be doing a floodplain study on every subdivision, which adds work for Staff and consultants.

He noted that the 1997 Subdivision Regulations stated that if anyone began work on subdivisions prior to County Commissioner approval, the County would not guarantee that the subdivision would be approved. In 2000, the regulations were changed to say that the applicant cannot make improvements while going through the process. He said that the proposed regulations, in Section 3-1-1, state that no one can build until the preliminary plat has been approved. He said that the section can be interpreted that people cannot build a first house on a lot or start non-subdivision related improvements.

He argued that George Corn recommended deeming a "county-maintained road" as sufficient and taking out the requirement for submitting documentation of the legal status of roads providing primary access to the subdivision, as listed in the proposed regulations in Section 3-1-5 (a) (xxiv).

Karen explained that those changes would need to be made to Chapter 5.

Terry responded that if they changed Chapter 5, Sections 3-1-4 and 3-1-5 would be incorrect. He recommended changing the requirement to proving the road is "county-maintained."

He noted that under the parkland dedication, a title report is required, as is a \$400 to \$500 appraisal. He stated that the title report and appraisal

should be honored for one year instead of 30 days, or the initial information submitted should be honored at final plat.

He said that the master irrigation plan should not have to be a separate document because it creates more paperwork.

Regarding Section 3-1-5, he stated that the new regulations require a grading and drainage stormwater plan to be designed by a professional engineer, and then reviewed by DEQ's engineers and WGM's engineers. He said that paying three separate engineers to do the same thing is redundant.

He noted that Section 3-1-5 (b) (ii) (E) (1) requires two-foot contours if slopes are greater than eight percent. He noted that in the past, he has submitted plats based on the size of the lots and the specific terrain. He said that sometimes one-foot or five-foot contours are more appropriate.

He explained that Section 3-1-5 (b) (ii) (G) (2) requires cross-sections for all roads on the preliminary plat and road cross-sections exceeding an eight percent grade, although the current regulations allow a ten percent grade.

He said that changing covenants does not really matter, as listed in Section 3-2-8 regarding amended applications. He requested only providing one title report, as opposed to requirements in Section 3-4-4. He said that Section 3-4-5 does not leave room for the subdivision exemption process because it supersedes the process set up in Chapter 4.

He expressed concerns with Section 4-5-1, which regulates boundary line relocations to one per parcel. He also expressed concerns with Section 4-5-2 (d), which is regarding prior deeds. He noted that for people to complete a family transfer, they have to deed the property to a husband to give to his wife or take it out of a trust to give to their kids. He noted that on family transfer approval letters in the past year, the County Attorney recommended not selling the property within a four to five year period, but now the time limit is five years, with no type of appeal process. He noted that much can happen in five years including family problems, deaths, etc. He noted that sometimes family transfers are from parents to their married children and the spouse cannot be included. He said that sometimes for loan purposes the spouse needs to be included. He noted that the new restriction will prohibit filing a new deed in five years. He suggested allowing the applicant to add names to the deed, such as a child or spouse, but not transfer the title out of the original recipient's name. He noted that his business has been held up by this process. He noted that in 2000, he provided several suggestions which were not listened to and have become problematic. He asked the Board to recognize twelve years of

experience working with these regulations and take his comments into account.

Jason Rice, with Landworks Consulting and Design, noted he submitted a letter with comments. Although he agreed with Steve Powell that the regulations need to be revised, he said some sections will not work. He noted that the definition of "No-Build/Alteration Zone" conflicts with allowable uses in Chapter 5. He noted that Section 3-1-3, which lists who can enter a property, is an open statement. He explained that many landowners have cattle or irrigation systems and allowing an undefined list is a bad idea because of liability and scheduling. He recommended defining affected agencies. He said that one of the required items for preliminary plat review is an Environmental Health checklist, which is based on state law. He recommended requiring that checklist to be changed in a public hearing because Staff might change it to be more stringent than state law requires. He noted that preliminary engineering plans are not defined anywhere in the regulations. He noted that although he receives many requests for preliminary data, things are not final until they are built. He argued that the County does not need true, detailed engineering on the preliminary plat. He explained that in Missoula County, they have an engineer sign off that the preliminary plans have been prepared under his or her supervision. He said that there is no reason that pro rata cannot be determined in the preliminary plat stage and that it takes risk out of the equation. He recommended having pro rata approved with the preliminary plat and noted that traffic counts are only bound to increase in a two-year period. He noted that although road issues and Chapter 5 will not be dealt with at this time, requirement of "preliminary road plans" are critical. He noted that they are being reviewed as final plans, but they are not constructible and should be kept as preliminary plans. He referred to Sections 3-1-6 (a) (iv) and 3-1-6 (b) (i) (D). He noted that the timing to get through sufficiency is six months from the first sufficiency denial. He said that applicants can get into a stalemate with an agency that takes a long time to respond. He recommended allowing applicants to notice that they are working on the issue. He said that most places keep files until they are inactive for a year and then throw them away. He said that there is no reason to have this catch in the regulations.

He noted that Section 3-2-6 allows the BCC to extend their decision, although they should not be allowed to extend it past 60 days. He said that Section 3-2-7 (f) (ii) does not give the County Commissioners a timeline in which to respond to the extension request. He noted that if the Commissioners do not have that meeting by the time the plat approval expires, there is not a point in having this regulation. He recommended revising the regulation so that the subdivision is automatically extended or require a meeting in 30 days. He said that Section 3-2-8 is too vague. He recommended adding more examples or clarifying the section. He recommended a timeline for Section 3-2-8 (e) (i) so appeals do not sit there forever. Regarding Section 3-4-4 (a) (x), the County is asking applicants to turn in permits. He did not know

why the County should play police on this. He pointed to Page 3-24 of the new memorandum and inquired about regulations held by the Environmental Health Department but not DEQ.

Karen noted the regulation was revised so it only applies in cases where other County Regulations have been adopted that are more stringent than state water and sewer requirements.

Jason Rice pointed out Page 3-26 of the new memorandum which deals with new conditions on phased projects. He noted that if the developer phases a project and files Phase 2 with a road aligned with an eight percent grade, but the regulations change to only allow a six percent grade, then the developer would have to deal with a major deviation. He noted that no one can see the future and the regulations need to be reasonable. He suggested that road alignments be static. He asked about the proposed process of adding conditions to later final plat approvals.

Karen said she tried to use what Missoula County did as a model. She noted that in Missoula County Commissioners can add conditions according to changes in their regulations.

Jason Rice said that maybe they can add conditions that affect public health and safety. He recommended having a hearing built into it or a timeframe. He noted that aside from procedural issues with vague times and dates, the draft is overall pretty good.

John Kellogg from PCI supported Staff's efforts considering the time crunch. He noted that he submitted previous comments and some have been incorporated into the recommendations. He pointed to Section 3-4-4 (xxiii) and noted it was difficult to get a letter from the US Army Corps of Engineers. He recommended saying "or letters from these agencies stating permits are not required." He explained that Section 4-5-4 (c) (iii) should include a provision for creating a better building site if new information arises. He noted that some subdivisions approved in the 1970s and 1980s could have improved building sites. He expressed concerns about changes listed in the new memorandum from Larry Schock and Laura Hendrix. He noted that they removed one of the definitions of a stream and that consultants will have to prepare a floodplain analysis for every trickle of water in the area. He encouraged the Boards to keep the process moving so the regulations can be adopted soon.

Betty Frost said that although she is not familiar with the subdivision regulations, she wants to see the County Commissioners take on more subdivision review to allow Staff to do more planning. She recommended simplicity for smaller subdivisions and noted that there should be exceptions for people trying to do family transfers in previously platted subdivisions.

The Boards took a five-minute break.

(iii) Joint Discussion and Deliberation of the Planning Board and Board of County Commissioners

Chip stated that the majority of comments were from consultants that work with the subdivision regulations every day. He said that although he wants to pass the regulations as soon as possible, they have identified issues and he wants to have enough time to address those concerns. He said that although the Boards are aware of the issues, they are not as well-versed in them.

Karen offered to have the Boards go line-by-line through the document. She noted that she is fairly familiar with the comments and she could address them as they move through the regulations. She noted another alternative is to direct Staff to respond to public comments.

Les said that the Planning Board is not in a position to address comments made by professionals. He said that the Planning Department should incorporate the comments.

Ben said he was unclear what the preferred alternatives were. He said that if the Boards go line-by-line today, they could make a decision today on each proposed change. He asked if Staff was proposing to talk about the changes and then create a revised draft to be put to a vote.

Dan said it would be more efficient if Staff prepared revised regulations and brought them to a continued hearing. He asked for opinions from the County Commissioners.

Ben said that an alternative would be to continue the meeting. He said that some people could stay today and go line-by-line and present the revised draft at a continuation.

James said that the County Commissioners need to vote on a draft. The Boards could have individual votes on proposed amendments, but the County Commissioners need to adopt one document in the end.

Dan asked if it would be better to have Staff prepare another draft with changes.

Karen said it is most efficient for Staff to respond to the proposed changes and provide a revised draft, but it prolongs the process. She suggested going through the document line-by-line to expedite the process.

Tori asked if the Boards could agree to approve parts that are not in question.

Chip said that he is concerned about the number of comments. He said that he wants Staff to create a draft incorporating the comments and explaining why some comments cannot be incorporated.

Commissioner Lund stated she agrees with Chip and wants to see the comments in the draft with notes.

Chip agreed. He motioned to have revisions prepared by Staff and considered at a continuation of the hearing and for Staff to figure out a way to address comments in the draft.

Mary Lee seconded the motion.

Ben recommended hearing input from the County Commissioners before they vote since they are at a joint hearing.

Commissioner Chilcott stated that he hates to drag out the process. He suggested agreeing on basic elements before sending the document back to Staff. He agreed that putting in comments is a good idea, but asked not to attach a consultant's name to the comments. He noted that although he hates the idea of going to one public hearing, it is a good one. He stated that he hates losing the diversity and review process of the Planning Board because it is valuable and gives the Commissioners a better perspective. He noted, however, that he is excited about future planning and hopes this creates more time for it. He said he hopes the Planning Board will assist in reviewing larger subdivisions.

Tori said she agrees with Commissioner Chilcott and Chip and asked them to consider adopting all of the chapters except Chapters 3 and 4 to streamline the process.

Karen noted there were some comments on Chapters 1 and 2 that have not been addressed.

Dan asked if the Boards could approve certain sections today and continue the process at another public hearing.

Commissioner Chilcott recommended talking about concepts and adopting something today and beginning the amendment process immediately.

Karen noted that many of the comments provided were good and some changes are critical. She said that Staff should be able to have a new version in a week or less.

James suggested addressing major concepts, such as the one hearing procedure, before sending Staff back to revise the document.

Chip said it was tough for him to adopt the major concepts and amend the rest of the regulations later. He recommended waiting a week so Staff can merge comments for a new draft and agreed with the one hearing proposal.

Commissioner Lund stated that one hearing is fine and if the Planning Board agrees then Karen can work on other revisions.

Chip amended his motion to include retaining one public hearing before the Commissioners as part of the revised regulations.

Mary Lee seconded the amendment.

(iv) Planning Board's Action

The vote was called; the members voted (9-0) to approve the motion.

(v) Board of County Commissioners' Action

Commissioner Lund echoed the Planning Board's motion to have Staff prepare a revised draft of the Subdivision Regulations with public comments. She added that the County Commissioners accept the recommendation to have only one public hearing before the Commissioners.

James recommended directing Staff to include all comments in the draft or to prepare a Staff Report with amendments deemed as appropriate. He noted that there are probably multiple comments on the same regulation, which incorporated, might not make sense.

Karen said her understanding was that all comments would be addressed within the revised draft, whether they were incorporated into the Subdivision Regulations or not.

James said his understanding was that the changes would be incorporated into the draft.

Commissioner Lund said she wanted to see all the comments in a draft. She said that if the comments conflict with each other or state law, she wants an explanation.

Karen summarized that the Commissioners want amendments or a response to comments, or a choice between conflicting comments. She noted this task would be more feasible if comments are sent in a Word document.

Commissioner Lund restated the motion so that the Planning Department would provide an amended version of the regulations with comments received to date and responses and recommendations to each of those comments.

Commissioner Thompson said that he hates to keep sending Karen back to make revisions. He noted that somewhere they have to say this is something they can accept and realize there are amendments for the future and continue to work on them. He stated that this will never be a finished document because of ever-changing state law. He asked the timeframe if the Commissioners accept Commissioner Lund's motion.

Karen said she can create a revised version in a week.

Commissioner Chilcott said that the public needs to have two weeks to review the document.

James asked if Staff is anticipating that revisions to proposed amendments will be substantial enough to require a new public hearing.

Karen said that they could be and she would identify the substantial changes.

James said that if the Boards are just refining the regulations, they would not need to hold another hearing and this can be continued as a public meeting. He noted that another alternative is to continue the hearing to the following week. He said that if the revisions are substantially different, they would need to notice a new hearing. He recommended allowing 24 hours between when Karen finishes the draft and when the meeting is scheduled.

Commissioner Thompson said he does not see the changes being substantive. He asked those who made comments if they think the changes will be substantive. He recommended holding a public meeting the following week and adopting the changes at that time.

Jason Rice said that if they are adopting the current regulations with amendments, that would be fine, but he would like to see or hear new comments.

Karen noted that some changes could be fairly substantial and suggested if they are to be made or addressed, they would need to hold a hearing on it, although most changes are minor.

Commissioner Thompson seconded the motion.

Ben recommended using the track changes feature in Microsoft Word.

The Commissioners voted (3-0) to approve the motion.

Commissioner Thompson motioned to continue the meeting at November 20, 2006, at 10:00 a.m. in the Commissioners' meeting room.

Commissioner Lund seconded the motion.

The Commissioners voted (3-0) to approve the motion.

6. Suspend Public Hearing

7. Adjournment

Commissioner Chilcott adjourned the meeting at 12:08 p.m.

In other business the Board of County Commissioners met to receive bids for 4 parcels of real estate being held for Public Auction. Present at this auction was Road Supervisor David Ohnstad.

Commissioner Lund advised that deeds would not be made today, but cash would be accepted on Monday and deeds would be prepared at that time.

Commissioner Lund called for bids on the following parcels:

Parcel One - three lots on Market Street in Corvallis, minimum bid: \$108,000

Chuck Garber asked about title insurance.

Commissioner Lund said a quit claim deed would be provided; the County doesn't lien its property.

David said all properties were newly appraised to be in concordance with Montana code.

Parcel 1 – three lots on Market Street, minimum bid: \$75,600. Commissioner Lund called for bids. No bids were received. Parcel #1 bidding was closed.

Parcel 2 - Owings Creek Road, minimum bid: \$60,300. Commissioner Lund called for bids. No bids were received. Parcel #2 bidding was closed.

Parcel 3 - Sweathouse Creek Road, minimum bid: \$90,000. Commissioner Lund called for bids. No bids were received. Parcel #3 bidding was closed.

Parcel 4 - Camp Three Road, minimum bid: \$75,600. Commissioner Lund called for bids. No bids were received. Parcel #4 bidding was closed.

Since no bids were received, Commissioner Lund said Ravalli County would consider selling the following parcels at 70% of the appraised value.

Parcel 2 - Owings Creek Rd, minimum bid: \$46,900. Commissioner Lund called for bids. No bids were received. Parcel #2 bidding was closed.

Parcel #3 - Sweathouse Creek Rd, minimum bid: \$70,000. Commissioner Lund called for bids. No bids were received. Parcel #3 bidding was closed.

Commissioner Thompson said the properties could be sold by private agreement, but not for less than 70% of the appraised value.